

## Recology seeks to have SEC appeal dismissed



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CARSON CITY —In their appeal to the State Environmental Commission over NDEP's issuance of an operating permit for the construction of a class 1 landfill, Robert Dolan and Massey Mayo alleged there would be environmental damage and the beauty of the playa would be negatively affected if the project moved forward.

In seeking to have the appeal dismissed, Recology argued the two lack standing to bring such an appeal.

The arguments of the two sides are essentially the same ones they've made all along; they're just being heard in a new venue.

Dolan and Mayo, on behalf of the Clean Desert Foundation, appealed the issuance of the operating permit by NDEP and their appeals are scheduled to be heard May 21 & 22 by the SEC.

In their motion to have the appeals dismissed, the legal representative for Recology accused Dolan and Mayo of playing a shell game and attempting to circumvent decisions made by the federal court.

The motion to dismiss was crafted by attorneys from the legal firm representing Recology, McDonald Carano Wilson, John Frankovich and Debbie Leonard.

The motion to dismiss filed March 25 noted the federal court ruled in December 2011 that Dolan and Mayo lacked standing in the appeals process because they do not have the required property interest in the area where the landfill will be built, which is private property surrounded by BLM-managed lands with no specific use determinations, and the two are therefore not "aggrieved" parties as the law requires.

Subsequently, the Clean Desert Foundation was formed, of which Dolan is the resident agent and Mayo a member in good standing.

Dolan and Mayo will represent the Clean Desert Foundation and appellant Robert Hannum at the appeal; local resident Richard Cook is also appealing.

In the motion to dismiss the appeal, legal representatives argued the appellants continue to lack standing for the same reason they lacked standing at all the previous appeals: they have no property interest in the area and do not meet the definition of "aggrieved" parties.

All those appealing live in Winnemucca with the exception of Hannum, who lives more than 400 miles away in California.

Although it was noted that Hannum purports to own property in the Desert Valley, within two or three miles of the Jungo site, the attorneys point out the property appeared to have been purchased after Jungo Land & Investments obtained the landfill site and had been issued a conditional use permit for the construction of a landfill.

Under NRS 445B.350 and NRS 445B.360 only "aggrieved" parties may bring appeals.

The Nevada Supreme Court has defined "aggrieved" parties as those whose personal property rights have been adversely and substantially affected (reference: *Las Vegas Police Protective Association Metro, Inc v 8thJDC*).

The motion notes, "Here, Appellants have failed to identify a personal property right that is adversely and substantially affected by Jungo's permit because no such right exists."

The appeal noted Hannum's appeal was brought on an alleged violation of the National Pollution Discharge Elimination System permit, not the solid waste disposal site permit issued by the NDEP -- making Hannum's appeal moot.

In arguing that Dolan and Mayo lack standing to appeal, by extension so does the Clean Desert Foundation.

The motion noted the purpose of the Foundation was to educate the public and government about the beauties of the desert and how policies and programs threaten that beauty.

The motion to dismiss notes, "NDEP's issuance of the permit for the Jungo project will not interfere with the CDFs educational mission or preclude CDF from engaging in its educational activities."

While the Clean Desert Foundation members purport to enjoy recreational activities in the area, the landfill site is private property.

In conclusion, Frankovich/Leonard noted standing is not “just a legal technicality, but a jurisdictional prerequisite”, and under the law the right to appeal has not been left open to just anyone.

The motion to dismiss noted, “This jurisdictional limitation protects the rights of the permit holder, preserves the resources of the agency and prevents unauthorized attacks on the permitting process by unaffected persons.”

Frankovich/Leonard alleged the formation of the Clean Desert Foundation was nothing more than a screen to protect Dolan and Mayo from liability for their continued attacks on the Jungo project.

As of this post, only Cook has responded to the motion to dismiss.

In a letter to the SEC, he argued he has a right to appeal as a citizen and further called the arguments made in the motion by McDonald Carano Wilson irrelevant.

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